

REMARKS

Amended independent claim 1, claims 2 and 7 dependent from claim 1, amended independent claim 14, claim 15 dependent from claim 14, amended independent claim 16, and claim 17 dependent from claim 16 remain for consideration in this application. Claim 19 was deemed allowable in the Examiner's last office action .

Reconsideration of the rejection of independent claims 1, 2, 7, and 14-17 under 35 U.S.C. § 112, first paragraph, is requested. The rejection under § 112 was based on an assertion that the claims contained subject matter not adequately described in the specification as originally filed to reasonably convey to one skilled in the relevant art that the inventors, at the time of the application as filed, had possession of the claimed invention as originally filed. Specifically, objection was made to the recitation in independent claims 1, 14, and 16 of "at least about 8% by weight" of the alkaline electrolyte. The recitation objected to has been removed from independent claims 1, 14, and 16, and the § 112 rejection has, therefore, been traversed.

Claims 1, 14, and 16, as amended, call for the additive combined with the normally acidic supplement to contain calcium, magnesium, and potassium electrolytes, in recited ratios, and that the amount of magnesium should equal at least 30-100% of the calcium. Descriptive support for these recitations is found at page 15, line 18 through page 16, line 8, and page 19, line 6 through page 20, line 2 of the specification.

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Claims 1 and 2 were rejected under 35 U.S.C. § 102b as anticipated by Murto, WO 98/20748. Attached is a Supplemental Declaration under Rule 131 of applicant Janmarie Hornack, swearing back of the effective filing date of the Murto WO reference. As confirmed by Ms. Hornack's Declaration of August 6, 2002, submitted in parent application 09/706,005, she commenced work on improving the effectiveness and utilization of solid dietary and/or therapeutic supplement agents as least as early as 1995. In her laboratory notebook, identified in the August 6, 2002, Declaration, an entry of March 10, 1997, confirms that Ms. Hornack raised the pH of MSM from 6.4 to 8.44 utilizing calcium carbonate. Therefore, by at least March of 1997, Ms. Hornack had prepared a supplement composition for human consumption consisting essentially of a supplement agent, such as MSM, and an alkaline electrolyte additive, such as calcium carbonate, to increase the pH of the supplement to a level of from about 8 to about 12.5. Accordingly, in view of the attached Supplemental Declaration executed by Ms. Hornack, Murto is not effective prior art against the claims remaining of record in this case.

In addition, independent claim 1 as now amended, clearly distinguishes over the disclosure of the Murto '748 publication. Claim 1 calls for a dietary and/or therapeutic supplement composition for human consumption, consisting essentially of an alkaline additive combined with the supplement agent that contains a mixture of calcium, magnesium, and potassium electrolytes. The magnesium electrolyte is present in an amount of from about 30% to about 100% of the amount of the calcium electrolyte. The ratios of the calcium, magnesium, and potassium electrolytes on a weight to weight basis, range from 1-2/0.5-1.25/0.5-2, respectively.

First, Murto relates to a feed supplement intended to enhance bone formation and cartilage development in animals, and the product is not intended for human consumption. Murto's formulations do not include an alkaline additive containing a mixture of calcium, magnesium, and potassium electrolytes. Example 1 in column 4 and the Examples in column 7 include only calcium carbonate as an electrolyte. The publication does not set forth a combination of calcium, magnesium, and potassium electrolytes in the ratios called for in claim 1, or for the magnesium electrolyte to be present in an amount of from about 30% to about 100% of the amount of the calcium electrolyte.

Claim 16 was rejected as anticipated by Demopoulos EP Publication 0 444 000. The applicant teaches only stabilizing glucosamine sulphate by addition of ascorbic acid and calcium carbonate. Based on the disclosure of the '000 publication, one skilled in the art would not be led to combine calcium, magnesium, and potassium electrolytes to raise the pH of a normally acidic supplement to the specified about 8 to 12.5 level, or to provide such electrolytes in the ratios called for by claim 1.

Claims 1 and 2 were further rejected under 35 U.S.C. § 103a, as being unpatentable over the '748 Murto publication and in view of Walsh U.S. Patent No. 6,139,872. Not only is the Murto reference sworn back of, as set forth above in this response, but Murto is defective as a reference under § 103 for the reasons set forth in connection with the § 102 rejection based on Murto. Walsh's vitamin product included magnesium stearate or calcium stearate as lubricant tableting agents. There is no teaching in Walsh of the combination of calcium, magnesium, and potassium electrolytes as

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an additive for a therapeutic supplement, or providing a sufficient quantity of such electrolytes to raise the pH of the supplement to a level of from about 8 to about 12.5.

Claim 16 was rejected as unpatentable over the '000 Demopoulos publication when considered with the Walsh '872 patent. As noted above, Demopoulos discusses only the combination of glucosamine, ascorbic acid, and calcium carbonate, and makes no mention of an electrolyte additive containing calcium, magnesium, and potassium electrolytes, or that the three electrolytes in combination be present in specified ratios with the amount of magnesium being about 30% to 100% of the amount of calcium. Walsh does not supplement the noted deficiencies of Demopoulos.

Claim 18 has been canceled; therefore, the rejection of that claim under 35 U.S.C. § 103(a) as being unpatentable over Herschler U.S. Patent No. 4,568,547, is moot.

The office action does not contain a specific rejection of claim 14 under 35 U.S.C. §§ 102 and/or 103(a). However, the combination called for in claim 14 is not anticipated or obvious from any of the references applied against the other claims.

This application has been under prosecution before the Office for a significant period of time. Accordingly, it is requested that this response be considered on an expedited basis in order that a Notice of Allowance of claims 1, 2, 7, 14-17, and 19 be issued forthwith.

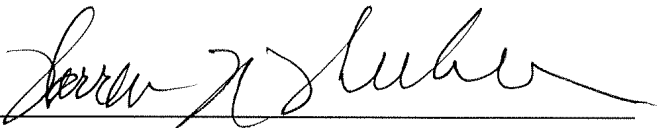
A three-month Petition for Extension of Time accompanies this Amendment. The Commissioner is hereby authorized to charge the fee for that extension and any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 19-0522.

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Respectfully submitted,

HOVEY WILLIAMS LLP

By:

A handwritten signature in black ink, appearing to read "Warren N. Williams", is written over a horizontal line.

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ATTORNEYS FOR APPLICANT(S)

[Attachment: Supplemental Declaration]